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PART II—Section 2

प्रधिकार से प्रकाशित

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No. 48]

NEW DELHI, SATURDAY, OCTOBER 16, 1982/ASVINA 24, 1904

इस भाग में भिन्न पृष्ठ संख्या की जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 16th October, 1982:—

BILL NO. 127 OF 1982

A Bill to provide for the acquisition and transfer of the undertakings of the Andhra Scientific Company Limited with a view to securing the proper management of such undertakings so as to subserve the interests of the general public by ensuring the continuity of production of scientific instruments which are vital to the needs of the country and for matters connected therewith or incidental thereto.

65 of 1951.

WHEREAS the Andhra Scientific Company Limited had been engaged in the manufacture and production of articles mentioned in the First Schedule to the Industries (Development and Regulation) Act, 1951, namely, scientific instruments;

65 of 1951.

AND WHEREAS the management of the undertakings of the Andhra Scientific Company Limited was taken over by the Central Government under section 18AA of the Industries (Development and Regulation) Act, 1951;

AND WHEREAS it is necessary to acquire the undertakings of the Andhra Scientific Company Limited to ensure that the interests of the general public are served by the continuance, by the undertakings of the Company, of the production of the aforesaid articles which are vital to the needs of the country;

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Andhra Scientific Company Limited (Acquisition and Transfer of Undertakings) Act, 1982.

(2) The provisions of sections 27 and 28 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 1st day of July, 1981.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "appointed day" means the 1st day of July, 1981;

(b) "Commissioner" means the Commissioner of Payments appointed under section 15;

(c) "Company" means the Andhra Scientific Company Limited, a company within the meaning of the Companies Act, 1956, and having its registered office at Machilipatnam in the State of Andhra Pradesh;

(d) "Custodian" means the Custodian appointed under sub-section (2) of section 9 to take over, or carry on, the management of the Company;

(e) "notification" means a notification published in the Official Gazette;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "specified date", in relation to any provision of this Act, means such date as the Central Government may, by notification, specify for the purposes of that provision and different dates may be specified for different provisions of this Act;

(h) "the Government company" means the Government company in which the undertakings of the Company are directed to vest under sub-section (1) of section 6;

(i) words and expressions used herein and not defined but defined in the Companies Act, 1956, shall have the meanings, respectively, assigned to them in that Act.

1 of 1956.

1 of 1956.

Transfer to, and vesting in, the Central Government of the undertakings of the Company.

3. On the appointed day, the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings, shall, by virtue of this Act, stand transferred to, and shall vest in, the Central Government.

General effect of vesting.

4. (1) The undertakings of the Company shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges, and all

property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, cheques, demand drafts, reserve funds, investments, book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the Company, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto.

(2) All properties as aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting them, and any attachment, injunction, decree or order of any court, tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall be deemed to have been withdrawn.

(3) Every mortgagee of any property which has vested under this Act in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

(4) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (3) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, out of the amount specified in section 7 and also out of the amounts determined under section 8, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(5) Any licence or other instrument granted to the Company in relation to any undertaking which has vested in the Central Government under section 3 at any time before the appointed day and in force immediately before that day shall continue to be in force on and after such day in accordance with its tenor in relation to and for the purposes of such undertaking, and, on and from the date of vesting of such undertaking under section 6 in a Government company, such Government company shall be deemed to be substituted in such licence or other instrument as if such licence or other instrument had been granted to such Government company and that Government company shall hold it for the remainder of the period for which the Company would have held it under the terms thereof.

(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any property which has vested in the Central Government, under section 3, instituted or preferred by or against the Company, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertakings of the Company or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Central Government, or, where the undertakings of the Company are directed, under section 6, to vest in a Government company, by or against that Government company.

Company
to be
liable for
certain
prior
liabilities.

5. (1) Every liability of the Company in respect of any period prior to the appointed day, shall be the liability of the Company and shall be enforceable against it, and not against the Central Government, or, where the undertakings of the Company are directed, under section 6, to vest in a Government company, against that Government company.

(2) For the removal of doubts, it is hereby declared that—

(a) save as otherwise expressly provided in this section or in any other provision of this Act, no liability of the Company in respect of any period prior to the appointed day, shall be enforceable against the Central Government, or, where the undertakings of the Company are directed, under section 6, to vest in a Government company, against that Government company;

(b) no award, decree or order of any court, tribunal or other authority in relation to the undertakings of the Company, passed after the appointed day, in respect of any matter, claim or dispute which arose before that day, shall be enforceable against the Central Government, or, where the undertakings of the Company are directed, under section 6, to vest in a Government company, against that Government company;

(c) no liability incurred by the Company before the appointed day, for the contravention of any provision of law for the time being in force, shall be enforceable against the Central Government, or, where the undertakings of the Company are directed, under section 6, to vest in a Government company, against that Government company.

Power of
Central
Govern-
ment to
direct
vesting
of the
under-
takings
of the
Company
in a
company.

6. (1) Notwithstanding anything contained in sections 3 and 4, the Central Government may, subject to such terms and conditions as it may think fit to impose, direct, by notification, that the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings, which have vested in that Government under section 3, shall, instead of continuing to vest in the Central Government, vest in a Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest of the Company, in relation to its undertakings, vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities of the Government company.

CHAPTER III PAYMENT OF AMOUNTS

Payment
of amount.

7. For the transfer to, and vesting in, the Central Government, under section 3, of the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings, there shall be given by the Central Government to the Company, in cash and in the manner specified in Chapter VI, an amount of rupees two hundred and twenty-four lakhs and ten thousand.

8. (1) For the deprivation of the Company of the management of its undertakings, there shall be given by the Central Government to the Company in cash, an amount calculated at the rate of rupees ten thousand per annum for the period commencing on the date on which the management of the undertakings of the Company was taken over in pursuance of the order made by the Central Government under section 18AA of the Industries (Development and Regulation) Act, 1951, and ending on the appointed day.

65 of 1951.

Payment
of
further
amounts

(2) In consideration of the retrospective operation of the provisions of sections 3, 4 and 5, there shall also be given by the Central Government to the Company in cash, an amount calculated at the rate of rupees ten thousand per annum for the period commencing on the appointed day and ending on the date on which this Act receives the assent of the President.

(3) The amount specified in section 7, and the amount determined in accordance with the provisions of sub-sections (1) and (2) shall carry simple interest at the rate of four per cent. per annum for the period commencing on the appointed day and ending on the date on which payment of such amounts is made by the Central Government to the Commissioner.

(4) The amounts determined in accordance with the provisions of sub-sections (1), (2) and (3) shall be given by the Central Government to the Company in addition to the amount specified in section 7.

(5) For the removal of doubts, it is hereby declared that the liabilities of the Company in relation to its undertakings which have vested in the Central Government under section 3 shall be discharged from the amount referred to in section 7, and also from the amounts determined under sub-sections (1), (2) and (3), in accordance with the rights and interests of the creditors of the Company.

CHAPTER IV

MANAGEMENT, ETC., OF THE UNDERTAKINGS OF THE COMPANY

9. (1) The general superintendence, direction, control and management of the affairs and business of the undertakings of the Company, the right, title and interest in relation to which have vested in the Central Government under section 3, shall,—

(a) where a direction has been made by the Central Government under sub-section (1) of section 6, vest in the Government company specified in such direction; or

(b) where no such direction has been made by the Central Government, vest in one or more Custodians appointed by the Central Government under sub-section (2),

and thereupon the Government company so specified or the Custodian or Custodians so appointed, as the case may be, shall be entitled to exercise, to the exclusion of all other persons, all such powers and do all such things as the Company is authorised to exercise and do in relation to its undertakings.

Manage-
ment, etc.,
of the
under-
takings
of the
Company.

(2) The Central Government may appoint one or more individuals or a Government company as the Custodian or Custodians of the undertakings of the Company in relation to which no direction has been made by it under sub-section (1) of section 6.

(3) The Custodian or Custodians so appointed shall receive, from the funds of the undertakings of the Company, such remuneration as the Central Government may fix and shall hold office during the pleasure of the Central Government.

Duty of persons in charge of management of the undertakings of the Company to deliver all assets, etc.

10. (1) On the vesting of the management of the undertakings of the Company in a Government company or on the appointment of a Custodian or Custodians, all persons in charge of the management of the undertakings of the Company immediately before such vesting or appointment, shall be bound to deliver to the Government company or the Custodian or Custodians, as the case may be, all assets, books of account, registers or other documents in their custody relating to the undertakings of the Company.

(2) The Central Government may issue such directions as it may deem desirable in the circumstances of the case to the Government company or the Custodian or Custodians, and such Government company or the Custodian or Custodians may also, if it is considered necessary so to do, apply to the Central Government at any time for instructions as to the manner in which the management of the undertakings of the Company shall be conducted or in relation to any other matter arising in the course of such management.

Duty of persons to account for assets, etc., in their possession.

11. (1) Any person who has, on the appointed day, in his possession or under his control, any assets, books, documents or other papers relating to any undertaking owned by the Company, which have vested in the Central Government or in a Government company under this Act, and which belong to the Company, or would have so belonged, if the undertakings owned by the Company had not vested in the Central Government or such Government company, shall be liable to account for the said assets, books, documents and other papers to the Central Government or the Government company and shall deliver them up to the Central Government or such Government company or to such person or persons as the Central Government or the Government company may specify in this behalf.

(2) The Central Government or the Government company aforesaid may take or cause to be taken all necessary steps for securing possession of the undertakings of the Company which have vested in the Central Government or the Government company under this Act.

(3) The Company shall, within such period as the Central Government may allow in this behalf, furnish to that Government a complete inventory of all its properties and assets, as on the appointed day, pertaining to the undertakings which have vested in the Central Government under section 3, and, for this purpose, the Central Government or the Government company aforesaid shall afford to the Company all reasonable facilities.

Accounts and audit.

12. The Custodian or Custodians of the undertakings of the Company shall maintain an account of the undertakings of the Company in such form and manner and under such conditions as may be prescribed and the provisions of the Companies Act, 1956, shall apply to the audit of the accounts so maintained as they apply to the audit of the accounts of a company.

1 of 1956.

CHAPTER V

PROVISIONS RELATING TO THE EMPLOYEES OF THE COMPANY

Continuance of employees.

13. (1) Every person who has been, immediately before the appointed day, employed in any undertaking of the Company shall become,—

(a) on and from the appointed day, an employee of the Central Government, and

(b) where the undertakings of the Company are directed, under sub-section (1) of section 6, to vest in a Government company, an employee of the Government company on and from the date of such vesting,

and shall hold office or service under the Central Government, or the Government company, as the case may be, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the Government company, as the case may be, is duly terminated or until his remuneration and other conditions of service are duly altered by the Central Government or the Government company, as the case may be.

14 of 1947.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other person employed in any undertaking of the Company, to the Central Government or the Government company, shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

14. (1) Where the Company has established a provident fund, superannuation, welfare or other fund for the benefit of the persons employed in any of its undertakings, the moneys relatable to the officers or other employees whose services have become transferred by or under this Act to the Central Government or the Government company, shall, out of the moneys standing, on the appointed day, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the Central Government or the Government company, as the case may be.

Provi-
dent fund
and
other
funds.

(2) The moneys which stand transferred under sub-section (1) to the Central Government or the Government company, as the case may be, shall be dealt with by that Government or Government company in such manner as may be prescribed.

CHAPTER VI

COMMISSIONER OF PAYMENTS

15. (1) The Central Government shall, for the purpose of disbursing the amounts payable to the Company under sections 7 and 8, by notification, appoint a Commissioner of Payments.

Appoint-
ment of
Commis-
sioner of
Payments.

(2) The Central Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Act and different persons may be authorised to exercise different powers.

(3) Any person authorised by the Commissioner to exercise any of the powers exercisable by the Commissioner may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act and not by way of authorisation.

(4) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of India.

Payment by Central Government to the Commissioner.

16. (1) The Central Government shall, within thirty days from the specified date, pay in cash to the Commissioner, for payment to the Company,—

(a) an amount equal to the amount specified in section 7; and

(b) an amount equal to the amounts payable to the Company under section 8.

(2) A deposit account shall be opened by the Central Government in favour of the Commissioner in the Public Account of India and every amount paid under this Act to the Commissioner shall be deposited by him to the credit of the said deposit account and the said deposit account shall be operated by the Commissioner.

(3) Records shall be maintained by the Commissioner in respect of the undertakings of the Company in relation to which payments have been made to him under this Act.

(4) Interest accruing on the amount standing to the credit of the deposit account referred to in sub-section (2) shall enure to the benefit of the Company.

Certain powers of the Central Government or Government company.

17. (1) The Central Government or the Government company, as the case may be, shall be entitled to receive, up to the specified date, to the exclusion of all other persons, any money due to the Company in relation to its undertakings which have vested in the Central Government or the Government company, and realised after the appointed day, notwithstanding that the realisation pertains to a period prior to the appointed day.

(2) The Central Government or the Government company, as the case may be, may make a claim to the Commissioner with regard to every payment made by that Government or Government company after the appointed day, for discharging any liability of the Company in relation to any period prior to the appointed day, and every such claim shall have priority, in accordance with the priorities attaching under this Act, to the matter in relation to which such liability has been discharged by the Central Government or the Government company.

(3) Save as otherwise provided in this Act, the liabilities of the Company in respect of any transaction prior to the appointed day, which have not been discharged on or before the specified date shall be the liabilities of the Company.

Claims to be made to the Commissioner.

18. Every person having a claim against the Company with regard to any of the matters specified in the Schedule pertaining to any undertaking owned by it shall prefer such claim before the Commissioner within thirty days from the specified date:

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said

period of thirty days, he may entertain the claim within a further period of thirty days, but not thereafter.

19. The claims made under section 18 shall have priorities in accordance with the following principles, namely:—

Priority
of claims.

(a) Category I shall have precedence over all other categories and Category II shall have precedence over Category III, and so on;

(b) the claims specified in each of the categories shall rank equally and be paid in full, but, if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly; and

(c) the question of discharging any liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

20. (1) On receipt of the claims made under section 18, the Commissioner shall arrange the claims in the order of priorities specified in the Schedule and examine the same in accordance with such order.

Exam-
ination of
claims.

(2) If, on examination of the claims, the Commissioner is of opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the claims in respect of such lower category.

21. (1) After examining the claims with reference to the priorities specified in the Schedule, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim.

Admission
or re-
jection of
claims.

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of any daily newspaper in the English language having circulation in the major part of the country and in one issue of any daily newspaper in such regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the period specified in the advertisement.

(3) Every claimant who fails to file the proof of his claim within the period specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the Company an opportunity of refuting the claim and after giving the claimant a reasonable opportunity of being heard, by order in writing, admit or reject the claim in whole or in part.

(5) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions, including the place or places at which he may hold his sitting and shall, for the purpose of making any investigation under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the issuing of any commission for the examination of witnesses.

(6) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Commissioner shall be deemed to be a Civil Court for the purposes of section 195, and Chapter XXVI, of the Code of Criminal Procedure, 1973.

45 of 1860.
2 of 1974.

(7) A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against such decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the registered office of the Company is situated:

Provided that where a person who is a Judge of a High Court is appointed to be the Commissioner, such appeal shall lie to the High Court exercising jurisdiction over the place in which the registered office of the Company is situated and such appeal shall be heard and disposed of by not less than two Judges of that High Court.

Disbursement of money by the Commissioner.

Disbursement of amounts to the Company.

22. After admitting a claim under this Act, the amount due in respect of such claim shall be paid by the Commissioner to the person or persons to whom such amount is due, and on such payment, the liability of the Company in respect of such claim shall stand discharged.

23. (1) If, out of the moneys paid to him, in relation to the undertakings of the Company, there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the Company.

(2) Where the possession of any machinery, equipment or other property has vested in the Central Government or a Government company under this Act, but such machinery, equipment or other property does not belong to the Company, it shall be lawful for the Central Government or the Government company to continue to possess such machinery or equipment or other property on the same terms and conditions under which they were possessed by the Company immediately before the appointed day.

24. Any money paid to the Commissioner which remains undisbursed or unclaimed on the date immediately preceding the date on which the office of the Commissioner is finally wound up, shall be transferred by the Commissioner, before his office is finally wound up, to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred to the Central Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, and the order, if any, for the payment of the claim being treated as an order for the refund of revenue.

Undisbursed or unclaimed amount to be deposited with the general revenue account

CHAPTER VII

MISCELLANEOUS

25. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority.

Act to have overriding effect.

26. Every contract entered into by the Company in relation to any of its undertakings, which has vested in the Central Government under section 3, for any service, sale or supply, and in force immediately before the appointed day, shall, on and from the expiry of a period of thirty days from the date on which this Act receives the assent of the President, cease to have effect unless such contract is, before the expiry of that period, ratified in writing, by the Central Government or the Government company in which such undertaking has been vested under this Act and in ratifying such contract, the Central Government or the Government company may make such alterations or modifications therein as it may think fit:

Contracts to cease to have effect unless ratified by Central Government or Government company.

Provided that the Central Government or the Government company shall not omit to ratify a contract and shall not make any alteration or modification in a contract—

(a) unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the Central Government or the Government company; and

(b) except after giving the parties to the contract a reasonable opportunity of being heard and except after recording in writing its reasons for refusal to ratify the contract or for making any alteration or modification therein.

27. Any person who,—

Penalties.

(a) having in his possession, custody or control any property forming part of the undertakings of the Company, wrongfully withholds such property from the Central Government or the Government company; or

(b) wrongfully obtains possession of, or retains, any property forming part of the undertakings of the Company; or

(c) wilfully withholds or fails to furnish to the Central Government or the Government company or any person or body of persons specified by that Government or Government company, any document relating to such undertakings, which may be in his possession, custody or control; or

(d) fails to deliver to the Central Government or the Government company or any person or body of persons specified by that Government or Government company, any assets, books of account, registers or other documents in his possession, custody or control, relating to the undertakings of the Company; or

(e) wrongfully removes or destroys any property forming part of the undertakings of the Company or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

Offences by companies.

28. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.—*For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Protection of action taken in good faith.

29. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer or other employee of that Government or the Custodian or the Government company or other person authorised by that Government, Custodian or Government company for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or any officer or other employee of that Government or the Custodian or the Government company or other person authorised by that Government, Custodian or Government company for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

Delegation of powers.

30. (1) The Central Government may, by notification, direct that all or any of the powers exercisable by it under this Act, other than the powers conferred by this section and sections 31 and 32, may also be exercised by such person or persons as may be specified in the notification.

(2) Whenever any delegation of power is made under sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

31. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which, and the manner in which, an intimation referred to in sub-section (3) of section 4 shall be given;

(b) the form and manner in which, and the conditions under which, the Custodian or Custodians shall maintain the accounts as required by section 12;

(c) the manner in which the moneys in any provident fund or other fund referred to in section 14 shall be dealt with;

(d) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

32. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date on which this Act receives the assent of the President.

THE SCHEDULE

[See sections 18, 20(1), 21(1) and 23(1)]

ORDER OF PRIORITIES FOR THE DISCHARGE OF LIABILITIES OF THE COMPANY

Post-take-over management period

Category I

Wages, salaries and other dues of the employees of the Company.

Category II

Loans advanced by the Central Government.

Category III

Any credit availed of by the Company for the purpose of carrying on any trading or manufacturing operations.

Category IV

Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.

*Pre-take-over management period***Category V**

Arrears in relation to contributions to be made by the Company to the provident fund, salaries, wages and other amounts due to the employees of the Company.

Category VI

Revenue, taxes, cesses, rates or any other dues, including Employees' State Insurance contributions, to the Central Government, a Local Authority or a State Electricity Board.

Category VII

- (i) Any credit availed of by the Company for the purpose of carrying on any trading or manufacturing operations.
- (ii) Any other dues.

STATEMENT OF OBJECTS AND REASONS

The Andhra Scientific Company Limited, Machilipatnam, is engaged in the manufacture and production of various types of scientific instruments. From a small beginning, the Company had grown to be the largest private sector undertaking in the field of scientific instruments. Building up steadily, the Company attained a turnover of Rs. 45 lakhs by 1965-66. A downward trend started thereafter and in 1967-68, the Company incurred a loss of Rs. 1.91 lakhs which increased to Rs. 25.62 lakhs in 1971-72. In the light of the recommendations of certain Governmental Committees and in view of the fact that the Company had a body of talented and dedicated scientists and engineers its management was taken over by the Central Government under section 18AA of the Industries (Development and Regulation) Act, 1951, in June 1972.

2. Though the Central Government was advancing some amounts as loans during the period of its management, the Company was facing acute shortage of liquid funds for its working capital requirements. Funds are also required for modernisation of the plant and machinery. But pending nationalisation of the Company, it was not possible for Government to invest the required amount of funds in the Company. Studies made to determine the future set-up of the Company revealed that the undertakings of the Company should be nationalised in order to consolidate the gains of management and to ensure uninterrupted supply of critical items of defence production. In view of the importance of the products manufactured by the Company and the loss of employment to more than 850 employees of the Company if the Company were to be closed down, it is considered necessary to take over the undertakings of the Company.

3. The Bill seeks to achieve the aforesaid object. Apart from providing for the acquisition and transfer of the undertakings of the Company, the Bill provides for the payment of an amount for such acquisition, vesting of the undertakings of the Company in a Government company, appointment of a Commissioner of Payments for the purpose of disbursing the amount payable to the Company and for other incidental and consequential matters.

NEW DELHI;

The 22nd September, 1982.

R. VENKATARAMAN.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter dated the 30th September, 1982 from Shri R. Venkataraman, Minister of Defence to the Secretary, Lok Sabha.]

The President, having been informed of the subject matter of the Bill to provide for the Acquisition and Transfer of Undertakings of the Andhra Scientific Company Limited, is pleased to recommend, under clauses (1) and (3) of article 117 of the Constitution, the introduction of the said Bill in and its consideration by Lok Sabha.

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for the payment in cash of an amount of Rs. 224.10 lakhs for vesting in the Central Government of the undertakings of the Andhra Scientific Company Limited and the right, title and interest of the Company in relation to its undertakings.

2. Sub-clause (1) of clause 8 of the Bill provides for the payment in cash of a further amount calculated at the rate of Rs. 10,000 per annum for the deprivation of the Company of the management of its undertakings for the period commencing on the date on which the management of the undertakings of the Company was taken over by the Central Government and ending on the appointed day, i.e., the 1st day of July, 1981. It is estimated that this amount will be of the order of Rs. 90,000.

3. Sub-clause (2) of clause 8 of the Bill provides for payment in cash of a further amount in consideration of the retrospective operation of the provisions of clauses 3, 4 and 5 and calculated at the rate of Rs. 10,000 per annum for the period commencing on the appointed day and ending on the date on which the Bill receives the assent of the President. It is estimated that this amount will be of the order of Rs. 11,000.

4. Sub-clause (3) of clause 8 of the Bill provides for the payment of simple interest at the rate of four per cent. per annum in respect of the amounts payable under clause 7 and sub-clauses (1) and (2) of clause 8 for the period commencing on the appointed day and ending on the date on which the payment of such amounts is made by the Central Government to the Commissioner of Payments. It is estimated that this amount is likely to be of the order of Rs. 75,000 per month.

5. Clause 15 of the Bill provides for the appointment of a Commissioner of Payments by the Central Government for the purpose of disbursing the amounts payable to the Company. This clause also provides for the appointment of such other persons as it thinks fit to assist the Commissioner in the exercise of his powers under the Bill. Under sub-clause (4) of this clause, the salaries and allowances of the Commissioner and the other persons appointed to assist him will be defrayed out of the Consolidated Fund of India. The estimated expenditure on this account is likely to be of the order of Rs. 5,000 per month.

6. The pre-take-over loans given by nationalised banks and financial institutions to the Company are proposed to be protected outside the

compensation scheme. The principal amount due at the time of take-over was Rs. 35.85 lakhs. The interest as applicable without compounding will have to be paid. The total amount to be protected would be approximately Rs. 84.59 lakhs.

7. Provision in respect of gratuity amounting to Rs. 53.70 lakhs is also proposed to be made outside the compensation scheme. This would be assumed by the Central Government or by the Government company as the payments on this account will be small amounts accruing from time to time and the amounts will be payable as and when the employees go out of service.

8. The Bill, if enacted and brought into operation, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 31 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill. The matters in respect of which rules may be made, *inter alia*, relate to the time within which, and the manner in which, intimation regarding any mortgage, charge, lien, etc., on the properties which have vested in the Central Government may be given to the Commissioner of Payments, the form and manner in which, and the conditions under which, accounts shall be maintained by the Custodian or Custodians and the manner in which the moneys in any provident fund, superannuation, welfare or other fund maintained by the Company shall be dealt with by the Central Government or the Government company.

2. The matters in respect of which such rules may be made are matters of procedure and administrative detail. The delegation of legislative power is thus of a normal character.

BILL No. 132 of 1982

A Bill to provide for the amendment of laws relating to central excise and to validate duties of excise collected under such laws.

Be it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Central Excise Laws (Amendment and Validation) Act, 1982.

Short title
and
com-
mence-
ment.

(2) It shall be deemed to have come into force on the date of commencement of the Central Excises and Salt Act, 1944.

1 of 1944.

2. (1) In this section,—

Provi-
sions as to
exemp-
tion
from duty
of excise
or fixing
rate of
such duty
under
certain
Central
laws and
validation.

1 of 1944. (a) "Central Excises Act" means the Central Excises and Salt Act, 1944;

(b) "Central law" means a Central Act other than the Central Excises Act and includes a declared provision within the meaning of section 2 of the Provisional Collection of Taxes Act, 1931;

16 of 1931. (c) "exemption", in relation to any duty of excise, means exemption from the whole or any part of such duty;

(d) "preamble", in relation to any notification or order, means that part of the notification or order which refers to the powers in exercise or in pursuance of which such notification or order is issued or made.

(2) Every Central law providing for the levy and collection of any duty of excise which makes the provisions of the Central Excises Act and the rules made thereunder applicable by reference to the levy and collection of the duty of excise under such Central law shall have, and shall be deemed always to have had, effect with respect to the matters dealt with in sub-section (3) in the manner provided in that sub-section and this Act shall be construed as one with such Central law.

(3) Where any Central law providing for the levy and collection of any duty of excise makes the provisions of the Central Excises Act and the rules made thereunder applicable by reference to the levy and collection of the duty of excise under such Central law, then,—

(a) it shall be necessary for the purpose of granting, by any notification or order, any exemption from any duty of excise, or fixing, by any notification or order, any rate of duty, leviable under such Central law to expressly refer to the provisions of the said Central law in the preamble to such notification or order, or to state by express words in such notification or order that the exemption provided for, or the rate of duty fixed, by such notification or order is an exemption from, or the rate of duty under, such Central law;

(b) no notification or order issued or made under the Central Excises Act or the said rules (whether issued or made before, on or after the 24th day of September, 1982 and whether or not in force on such date) granting any exemption from any duty of excise or fixing any rate of such duty shall have the effect of, or be construed as, providing for exemption from the duty of excise leviable, or, as the case may be, fixing the rate of duty, under the said Central law, unless such notification or order—

(i) expressly refers to the provisions of the said Central law in the preamble; or

(ii) by express words, provides for an exemption from the duty of excise leviable, or, as the case may be, fixes the rate of duty, under the said Central law; and

(c) every notification or order of the nature referred to in clause (b) which expressly refers to the provisions of any Central law or Central laws in the preamble, shall have the effect of, and be construed as, providing for exemption from the duty of excise leviable, or, as the case may be, fixing a rate of duty, only under such Central law or Central laws, unless such notification or order also, by express words, provides for an exemption from the duty of excise leviable, or, as the case may be, fixes the rate of duty, under the Central Excises Act.

(4) Every notification or order granting any exemption or fixing a rate of duty issued or made under the Central Excises Act or the rules made thereunder at any time whatsoever before the 24th day of Sep-

tember, 1982 shall have, and shall be deemed always to have had, effect for all purposes as if the foregoing provisions of this section had been in force at all material times and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action or thing taken or done, or purporting to have been taken or done, under the Central Excises Act or the said rules or any Central law in any case by virtue of such notification or order shall be deemed to be, and to have always been, for all purposes as validly and effectively taken or done as if the foregoing provisions of this section had been in force at all material times, and, notwithstanding anything as aforesaid and without prejudice to the generality of the foregoing,—

(a) all duties of excise levied, assessed or collected with respect to any goods under the Central Excises Act or the said rules or any Central law shall be deemed to be, and shall be deemed always to have been, validly levied, assessed or collected as if the foregoing provisions of this section had been in force at all material times;

(b) no suit or other proceeding shall be maintained or continued in any court for the refund of, and no enforcement shall be made by any court of, any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the foregoing provisions of this section had been in force at all material times;

(c) refunds shall be made of all such duties of excise which have been collected but which would not have been collected if the foregoing provisions of this section had been in force at all material times; and

(d) recoveries shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded if the foregoing provisions of this section had been in force at all material times.

(5) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act had not come into force.

3. (1) The Central Excise Laws (Amendment and Validation) Ordinance, 1982, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

Repeal and
saving.

STATEMENT OF OBJECTS AND REASONS

Central excise duty is levied under the Central Excises and Salt Act, 1944 (hereinafter referred to as the Central Excises Act), and is commonly referred to as the basic excise duty. In addition to this duty, other duties of excise have also been imposed on certain commodities, such as, additional excise duty in lieu of sales tax levied on sugar, tobacco and fabrics under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, additional excise duty levied on specified fibres, yarns, fabrics, etc., for the purpose of subsidising the production of controlled cloth under the provisions of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, special excise duty under the Finance Acts and cesses on various items such as fabrics, biris, tea, etc., which are levied and collected as duties of excise.

2. The Delhi High Court, in a judgment delivered on the 6th of August, 1982 (CWP No. 1773 of 1979 etc. M/s. Modi Rubber Ltd. vs. Union of India), has held that in the absence of a specific reference to the nature of duty of excise in a notification providing for exemption from duty of excise on any goods, the exemption granted under the notification would apply to all the duties of excise leviable on such goods under different enactments. Such an interpretation would have the effect of defeating the intention underlying the various notifications which have been issued over a long period of time as the practice followed all along for decades has been to invoke expressly the powers under Acts, other than the Central Excises Act, whenever the intention was to grant exemption under such other Acts and to refer only to the Central Excises Act and the rules made thereunder whenever the intention was to confine the exemption only to the duty under the Central Excises Act. The effect of the judgment would be that a substantial portion of special excise duty, additional excise duty in lieu of sales tax, cesses, etc., on various items could not have been collected. In addition, the special excise duty and other additional duties collected over the years in the past would also be open to question. A number of writ petitions were also being filed in the Delhi High Court following the above judgment and the Court was granting stay of the collection of duties of excise in excess of the concessional rates specified in the notifications. Having regard to the huge revenue stakes involved, it became urgently necessary to spell out, by law, with retrospective effect, the intention as aforesaid clearly and to make the necessary validating provisions. Accordingly, the President promulgated the Central Excise Laws (Amendment and Validation) Ordinance, 1982, on the 24th September, 1982.

3. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 7th October, 1982.

PRANAB MUKHERJEE,

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND
274 OF THE CONSTITUTION OF INDIA

(Copy of letter No. 349/1/82-TRU, dated the 11th October, 1982 from Shri Pranab Mukherjee, Minister of Finance to the Secretary, Lok Sabha.)

The Vice-President discharging the functions of the President having been informed of the subject matter of the Central Excise Laws (Amendment and Validation) Bill, 1982 recommends under article 117(1) and article 274 of the Constitution of India, the introduction of the Bill in the Lok Sabha.

*Memorandum explaining the modifications contained in the Bill to
replace the Central Excise Laws (Amendment and Validation)
Ordinance, 1982*

The various expressions which have been defined in section 2 of the Ordinance at different places have been put together at one place in the beginning in sub-clause (1) of clause 2 of the Bill. Definitions of two more expressions, namely, "exemption" and "preamble" have been added by way of abundant caution.

2. Secondly, it has been spelt out expressly how the provisions made in the Bill are by way of amendment of the laws relating to Central excise [*vide* sub-clauses (2) and (3) (a) of clause 2 of the Bill]. In this connection, it may be mentioned that the long title to the Ordinance expressly mentions that the provisions of the Ordinance are by way of amendment of the laws relating to Central excise and sub-section (1) of section 2 of the Ordinance indicates by necessary implication how the provisions of the Ordinance are by way of such amendment. This aspect of the matter has now been brought out explicitly.

3. The Bill does not involve any other deviations except changes necessary for converting the Ordinance into a Bill and changes of a drafting nature.

AVATAR SINGH RIKHY,
Secretary.